

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAMMY ANN SAURO,

Defendant-Appellant.

UNPUBLISHED

March 27, 2007

No. 265951

Livingston Circuit Court

LC No. 04-014640-FH

Before: Smolenski, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right her conviction of embezzlement of between \$1,000 and \$20,000 from a vulnerable adult, MCL 750.174a(4)(a). The trial court sentenced defendant, as a habitual offender, fourth offense, MCL 769.12, to 6 to 20 years' imprisonment. We affirm defendant's conviction, but remand for resentencing.

Defendant was convicted of embezzling money from Dennis Dolan. Testimony established that defendant and Dolan began dating in July 2003 and that defendant moved into Dolan's house in the spring of 2004. Dolan was born in 1957, but cannot read or write except to sign his name. Dolan has attended classes for the mentally disabled and has never had a driver's license. Dolan's brother visits him every day and manages his finances. Dolan admitted that he should not handle his own money.

Dolan testified that he never withdrew money from the bank before he met defendant. But, after defendant moved in with him, he regularly withdrew money from his bank accounts. On several occasions, bank employees observed defendant with Dolan while he was making withdrawals. Dolan testified that after making each withdrawal, he gave the cash to defendant so that she could buy their food, toiletries, and clothes. Additionally, Dolan paid for a trip to a carnival with defendant, bought defendant a \$1500 car and furniture for their home, and gave over \$500 to defendant's daughter.

The evidence also established that, between July 9 and July 23, 2004, there were 14 cash withdrawals from Dolan's savings account. Indeed, on one day alone there were six withdrawals from his savings account. In addition, between July 27 and August 3, there were also 6 cash withdrawals and penalty withdrawals from Dolan's certificate of deposit (CD). In less than one month, Dolan's savings account balance of \$8,311.07 was reduced to \$11.07, and his CD balance of \$21,232.02 was reduced to zero.

Defendant first argues that there was insufficient evidence presented at trial for a rational juror to conclude that she embezzled money from a vulnerable adult. Specifically, she contends that there was insufficient evidence that she was a “person in a relationship of trust with a vulnerable adult” within the meaning of MCL 750.174a(11)(c) and that there was insufficient evidence that obtained the victim’s money through fraud, deceit, misrepresentation, or unjust enrichment under MCL 750.174a(1).¹ We disagree with both contentions.

This Court reviews de novo challenges to the sufficiency of the evidence. *People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2005). When reviewing a sufficiency of the evidence claim, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). “This standard is deferential and requires that this Court ‘draw all reasonable inferences and make credibility choices in support of the jury verdict.’” *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006), quoting *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). This Court also reviews de novo the proper interpretation of a statute. *Id.* at 320. This Court begins the interpretation of a statute by examining the language of the statute itself. *Id.* If the statute is not ambiguous, this Court will not construe it, but will enforce it as written. *Id.*

Defendant argues that the prosecution failed to produce sufficient evidence that she was in a “relationship of trust” with Dolan. Defendant asserts that in order for a person to be in a “relationship of trust” with a vulnerable adult within the meaning of MCL 750.174a(11)(c), the person must have a care-giving relationship with the vulnerable adult. We disagree.

MCL 750.174a(11)(c) defines “person in a relationship of trust” to mean “a person who is a caregiver, relative by blood, marriage, or adoption, household member, court-appointed fiduciary, or other person who is entrusted with or has assumed responsibility for the management of the vulnerable adult’s money or property.” Generally, a modifying clause is construed to modify only the last antecedent unless something in the subject matter or purpose of the statute requires a different interpretation. *Dessart v Burak*, 470 Mich 37, 41; 678 NW2d 615 (2004). Hence, the clause “who is entrusted with or has assumed responsibility for the management of the vulnerable adult’s money or property” modifies only “other person.” Further, the reference to “other person” appears to distinguish those persons from the persons previously defined to include caregivers, relatives by blood, marriage or adoption, household members and court-appointed fiduciaries. Therefore, we conclude that MCL 750.174a(11)(c) creates two separate classes of persons that qualify as persons “in a relationship of trust.” The first class of persons is made up of those who are caregivers, relatives by blood, marriage, or adoption, household members and court-appointed fiduciaries. The second class of persons is made up of persons who have assumed responsibility for the management of the vulnerable adult’s money or property. Because there was evidence that defendant had moved in with Dolan,

¹ Defendant was charged under MCL 750.174a as it existed prior to amendment in 2004. Therefore, unless otherwise noted, all citations are to MCL 750.174a as it existed prior to amendment by 2004 PA 255.

there was clearly sufficient evidence to establish that defendant was a household member and, consequently, met the definition of a “person in a relationship of trust.”

In addition, we reject defendant’s argument that the legislative history of MCL 750.174a indicates that “a person in a relationship of trust” must be a caregiver “bound to act in good faith and with due regard for the vulnerable adult’s interests.” Although courts may look at the legislative history of an act to ascertain its meaning, the value of legislative history in statutory construction is limited, *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 587; 624 NW2d 180 (2001), and cannot defeat the plain statutory language, *People v Adkins*, 272 Mich App 37, 48; 724 NW2d 710 (2006). Further, while the original bill contained language defining a “person in a relationship of trust” as someone who assumed a duty “to act in good faith and with due regard for the vulnerable adult’s interests,” this language was not included in the final version of the statute. We will not speculate as to the intent of the Legislature beyond the language expressed in the statute. *Twentieth Century Fox Home Entertainment, Inc v Dep’t of Treasury*, 270 Mich App 539, 547; 716 NW2d 598 (2006). Therefore, defendant’s arguments based on the legislative history are unavailing.

Next, defendant argues that there was insufficient evidence presented at trial that she obtained Dolan’s money through fraud, deceit, misrepresentation, or unjust enrichment. MCL 750.174a(1). We disagree. Contrary to defendant’s assertion, the fact that Dolan willingly gave his money to her does not preclude a finding of unjust enrichment. Unjust enrichment requires 1) the receipt of a benefit by the defendant from the plaintiff, and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). Dolan clearly has a limited understanding of finances and withdrew almost \$30,000 in less than one month. He testified that he gave the majority of his money directly to defendant, believing that she would spend the money on their groceries, toiletries, clothes and household items. Dolan was left virtually penniless and there is no proof of how the money was spent. We find, in light of these facts, that a reasonable jury could conclude beyond a reasonable doubt that defendant was unjustly enriched.

Finally, defendant argues that the trial court erred in basing an upward departure from the sentencing guidelines on her refusal to admit guilt. We review a trial court’s determination that a particular factor constituted a substantial and compelling reason to depart from the sentencing guidelines for an abuse of discretion. *People v Babcock*, 469 Mich 247, 264-265; 666 NW2d 231 (2003). An abuse of discretion exists when the sentence imposed is not within the range of principled outcomes. *Id.* at 269.

A trial court may depart from the sentencing guidelines range if it has a substantial and compelling reason to do so, and it articulates the reasons for its departure on the record. MCL 769.34(3); *People v Abramski*, 257 Mich App 71, 74; 665 NW2d 501 (2003). Factors meriting departure must be objective and verifiable, must keenly attract the trial court’s attention, and must be of considerable worth in deciding the length of the sentence. *Babcock, supra* at 257-258. If the trial court departs from the guidelines range and we find that it did not have a substantial and compelling reason for the departure, we must remand for resentencing. MCL 769.34(11); *Babcock, supra* at 265. If the reasons articulated by the trial court are partially invalid and it is not apparent whether it would have departed from the guidelines range to the same extent regardless of the invalid factors, we must remand for rearticulation or resentencing. *Id.* at 260.

Defendant argues, and the prosecution concedes, that the trial court erroneously based its departure from the guidelines on defendant's protestations of innocence. See *People v Conley*, 270 Mich App 301, 314; 715 NW2d 377 (2006). Therefore, defendant is entitled to resentencing. *Babcock, supra* at 260.

Affirmed, but remanded for resentencing. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Henry William Saad

/s/ Kurtis T. Wilder